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COMMISSION ON HUMAN RIGHTS
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Agenda item 10

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Argentina*, Australia, Austria, Belgium*, Bulgaria, Cameroon, Canada, Chile, Costa Rica, Cyprus, Czech Republic*, Finland, France, Germany, Hungary, Ireland*, Mauritius*, Norway*, Portugal*, Romania, Rwanda*, Senegal*, Slovakia*, Sweden*, Switzerland*: draft resolution

1994/... Question of arbitrary detention

The Commission on Human Rights,

Recalling its resolution 1985/16 of 11 March 1985, in which it requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to analyse the available information concerning the practice of administrative detention without charge or trial, and to make appropriate recommendations on the use of this practice,

Reaffirming articles 3, 9, 10 and 29 as well as other relevant provisions of the Universal Declaration of Human Rights,

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* In accordance with rule 69, para. 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

Recalling articles 9, 10, 11 and 14 to 22 of the International Covenant on Civil and Political Rights,

Having taken note with appreciation, at its forty-seventh session, of the revised report by Mr. Louis Joinet on the practice of administrative detention (E/CN.4/Sub.2/1990/29 and Add.1) and of the recommendations formulated therein,

Recalling that the General Assembly, in its resolution 43/173 of 9 December 1988, adopted the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which also covers administrative detention, and that, consequently, there is no longer a purpose in treating the question of administrative detention independently, even if, in certain cases, the procedure of administrative detention gives rise to specific abuse,

Recalling also its resolutions 1991/42 of 5 March 1991, 1992/28 of 28 February 1992 and 1993/36 of 5 March 1993,

Having considered the report of the Working Group (E/CN.4/1994/27),

Having heard the comments made during the fiftieth session of the Commission,

1. Expresses its appreciation to the Working Group on Arbitrary Detention for the conscientiousness with which it has defined its working methods and for the way in which it carries out its task, more particularly for recalling the importance that it attaches to respect for the adversarial procedure in its dialogue with States, and to seeking the cooperation of all those concerned by the cases submitted to it for consideration;

2. Takes note with satisfaction of the Working Group's report, inter alia its point-by-point examination of the requests made in resolution 1993/36, and thanks the experts for the rigour with which they have performed their task, in the light of the very specific nature of their mandate of investigating cases;

3. Requests the Working Group to continue, in discharging its mandate, to seek and gather information from Governments and intergovernmental and non-governmental organizations, as well as from the individuals concerned, their families or their legal representatives;

4. Invites the Working Group to continue to take account of the need to carry out its task with discretion, objectivity and independence and to continue to improve its methods of work within the framework of its mandate;

5. Takes note of the "deliberations" adopted by the Working Group on issues of a general nature (see E/CN.4/1994/27, sect. II) with a view to achieving better prevention and to facilitating the consideration of future cases as well as helping to further strengthen the impartiality of its work;

6. Takes note also of the importance that the Working Group attaches to coordination with other mechanisms of the Commission as well as with the treaty-monitoring bodies, and invites it to persevere in its efforts;

7. Expresses its profound thanks to Governments which have extended their cooperation to the Working Group and responded to its requests for information, and asks all Governments concerned to demonstrate the same spirit of cooperation;

8. Requests Governments concerned to give the necessary attention to the "urgent appeals" addressed to them by the Working Group on a strictly humanitarian basis and without prejudging the character of the detention;

9. Calls upon Governments concerned to pay due heed to the Working Group's decisions and, where necessary, to take appropriate steps and inform the Working Group, within a reasonable period of time, of the follow-up to the Group's recommendations so that it can report thereon to the Commission;

10. Encourages Governments to implement the recommendations of the Working Group concerning persons who have been detained for a number of years and are mentioned in the report of the Working Group;

11. Encourages Governments to consider inviting the Working Group to their countries so as to enable the Group to discharge its protection mandate even more effectively and to make concrete recommendations concerning the promotion of human rights, in the spirit of the advisory or technical assistance services;

12. Welcomes the fact that the Working Group has been informed of the release of many individuals whose situation had been brought to its attention;

13. Expresses its concern at the fact that most cases of arbitrary deprivation of liberty are motivated by exercise of the right to freedom of opinion and expression;

14. Notes with concern that, according to the Working Group, the practice of arbitrary detention is facilitated and aggravated by several factors such as abuse of states of emergency, exercise of the powers specific to states of emergency without a formal declaration, non-observance of the principle of

proportionality between the gravity of the measures taken and the situation concerned, too vague a definition of offences against State security, and the existence of special or emergency jurisdictions;

15. Encourages States to endeavour to take appropriate measures to ensure that their legislation in these fields is in conformity with the relevant international instruments;

16. Also encourages States, in accordance with its resolution 1992/35 of 28 February 1992, entitled "Habeas corpus", and with the recommendations of the Working Group, to establish a procedure such as habeas corpus as a personal right not subject to derogation, including during states of emergency;

17. Requests the Secretary-General to ensure that the Working Group really receives all necessary assistance, particularly in regard to staffing and resources needed to discharge its mandate, including the organization, carrying out and follow-up of missions in countries wishing to invite the Working Group;

18. Decides to extend for a three-year period the mandate of the Working Group, composed of five independent experts, with the task of investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;

19. Requests the Working Group to submit a report to the Commission, at its fifty-first session, and to make any suggestions and recommendations which would enable it to discharge its task even better, particularly in regard to ways and means of ensuring effective follow-up to its decisions, in cooperation with Governments and to continue its consultations to that end;

20. Decides to continue its consideration of the question at its fifty-first session under the agenda item entitled "Question of the human rights of all persons subjected to any form of detention or imprisonment".